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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRYAN O'NEAL BENSON,

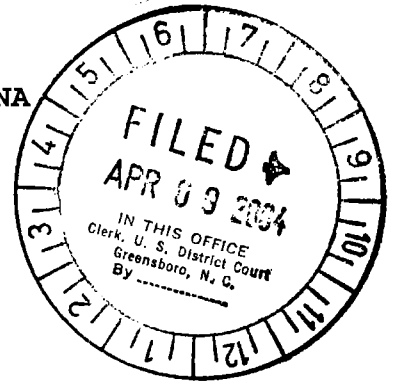
Plaintiff,

v.

CITY OF DURHAM,

Defendant.

1:04CV00157



O R D E R

On February 18, 2004, the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Thereafter, the Court received plaintiff's objections to the Recommendation, and he filed an amended complaint which he claims corrects the defects of the original complaint.

Plaintiff fails to show that the City of Durham was a responsible party. He only shows that an Officer Cartwright searched him in 2001. These are not the kind of allegations that would make the City responsible for the officer's actions. See City of Canton, Ohio v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). In addition, he now says his claim is for negligent infliction of emotional distress. This is a state law claim, not a federal claim. Furthermore, plaintiff has not shown that the action, Benson v. City of Durham's Police Department, No. 1:03CV1214, does not cover the same matters he seeks to litigate in this suit. It would constitute an abuse of the privilege to proceed as a pauper for plaintiff to file a second suit covering

the same matter. Plaintiff says he wants to dismiss the first lawsuit, but there is no indication he has done so and, in any event, that would not change the result here.

The Court has appropriately reviewed plaintiff's objections de novo and finds they do not change the substance of the United States Magistrate Judge's rulings which are affirmed and adopted.

NOW, THEREFORE, pursuant to the Recommendation of the United States Magistrate Judge, it is **ORDERED** that this action is dismissed for being frivolous or malicious or for failing to state a cause of action upon which relief may be granted.


United States District Judge

April 9 , 2004